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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,365	03/26/2004	Jameson P. Stull	43555-193696	1245
23973	7590	09/08/2004	EXAMINER	
DRINKER BIDDLE & REATH ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/810,365

Applicant(s)

STULL ET AL.

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/26/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, from which claims 2-18 depend, recites the limitation "the locking wedges" in the last line. There is insufficient antecedent basis for this limitation in the claim. Examiner notes the claim limits "at least one locking lever...the lower locking arm having an inwardly projecting locking wedge" (emphasis added).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 6-12, 16, 19, 22-25, 28-29, 32-34, 36, and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Stroud US 3,642,161.

Stroud '161 teaches a lid for a container, comprising a cover (16) with an integrally formed sealing ring (22), two locking levers (26) with an upper actuation (26) and lower locking arm with an inwardly projecting locking wedge (30), textured surface (unlabeled, best seen as two vertically-extending ribs in fig. 1), adapted to releasably engage the container lip (12), and connected to the cap by a hinge (24).

Lower locking wedge (30), best seen in fig. 2, comprises a rounded semi-circular projection. The limitations of claims 7-9 are met by this structure, as a rounded surface comprises tangential points through the range of 0 – 180 degrees.

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-5, 20-21 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stroud US 3,642,161 as applied above under 35 USC 102(b), in view of Mitchell et al. US 3,688,942 and in view of Azzarello US 2003/0085227.

Regarding claims 4, 20 and 30, Stroud '161 does not disclose the use of more than two locking levers.

Mitchell '942 teaches a container having upwards of six locking tabs (61), teaching one must unlatch two of the tabs with each hand, and then further unlock the remaining two tabs, inherently suggesting one can make the opening difficult by providing a plurality of locking tabs.

Azzarello '227 teaches in paragraph [0024] it is "physically difficult or impossible for one person to depress three or more cover tabs while simultaneously rotating the cover in the direction to remove the cover."

The two references separately teach the inherent difficulty – an advantage in child proofing a container – in openability of a container with increasing the number of locking tabs disposed on a container cover. This benefit is desirable on the container cover of Stroud '161, as it is disclosed in col. 1, lines 5-8 the container "...relates to safety caps for use on containers for the purpose of preventing access to the contents of the container by children..."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap of Stroud '161 with three, or any sufficient number of locking levers, as suggested by Mitchell '942 and Azzarello '227, motivated by the benefit of making the container more difficult to access by children. Further, Examiner notes it has been held that mere duplication of the

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essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 5, 21 and 31, rearranging four locking tabs, provided on Stroud '161 as modified, to be located adjacent each other, would be an obvious change in the location of the working parts, well within ordinary skill. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide two pairs of locking levers diametrically opposed to each other, as this would merely constitute duplicating the locking levers as presently disposed on the cap of Stroud '161. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Further, the provision of two locking levers adjacent each other is essentially the separation of one tab into two separate elements. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stroud 3,642,161 as applied above under 35 USC 102(b), in view of Martin et al. US 6,575,323.

Stroud '161 teaches an opening in the cover, but does not teach a hinged cover plate.

Martin '323 teaches a cover for a container having an opening and an integral cover.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Stroud '161, providing a dispensing opening, and integrally formed cover, as taught by Martin '323, motivated by the benefit of converting the container cap into a dispensing cover.

8. Claims 14, 26 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stroud 3,642,161 as applied above under 35 USC 102(b), in view of Buono US 5,865,330.

Stroud '161 does not disclose a threaded connection between the container and the cap.

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Buono '330 teaches a child resistant container (12) with exterior threads (14), having a cap (20) threaded to the container by a cylindrical wall (22) with interior threads, and held in place by resilient locking tabs (26).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container and cap of Stroud '161, providing a threaded neck on the container, and an inner cylindrical wall within the cap with corresponding threads, as taught by Buono '330, providing a user with a twist-off closure.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stroud 3,642,161 in view of Buono US 5,865,330 as applied to claim 14 under 35 USC 103(a) above, and further in view of Schutz US 5,881,907.

Stroud '161, as modified, does not teach a circular groove having a resilient O-ring seal. However, Buono '330 teaches the use of sealing ribs. These are best seen in fig. 3, are unlabeled, and are known to seal against the top surface of the container.

Schutz '907 teaches the use of an o-ring (16) disposed within a circular groove (15) within a threaded cap for sealing against the top surface of a neck opening.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container closure of Stroud '161, providing the circular groove and gasket taught by Schutz '907, motivated by the benefit of sealing the top of a neck opening.

10. Claims 17 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stroud US 3,642,161 as applied above under 35 USC 102(b).

Regarding claims 17 and 37, Stroud '161 does not disclose the cap formed of polypropylene. However, Stroud '161 does depict the closure cap formed of plastic, as indicated by the cross-hatching of the cap cross-section in the drawings.

Examiner takes Official Notice it is well known to form plastic container cover caps of polypropylene, or any other suitable material, motivated by design choice and the benefits of reduced

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cost and ease of manufacture known to be provided by the use of thermoplastics. Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claims 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stroud 3,642,161 as applied above under 35 USC 102(b), in view of Dressel et al. US 6,439,409.

Stroud '161 does not teach the hinge being formed of segments.

Dressel '409 teaches it is known to attach locking levers (18) to a container dap using a segmented hinge, comprising fulcra (20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the integral hinge of Stroud '161 with the segmented hinge comprising fulcra taught by Dressel '409, motivated by the benefit of reduced material consumption and a more flexible hinge.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,296,130	US 5,292,017
US 6,202,869	US 4,687,112
US 6,036,036	US 4,480,762
US 5,927,526	US 3,964,634
US 5,706,963	US 3,703,975
US 5,603,421	US 1,482,931
US 5,449,077	


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
9/7/04